

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

Michael David Bentley, et al.

APPLICATION NO.: **10/647,561**

FILED: **August 25, 2003**

FOR: **POLYMER STABILIZED NEUROPEPTIDES**

EXAMINER: **Thomas Sweeney Heard**

ART UNIT: **1654**

CONF. NO: **3230**

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Mail Stop Appeal Brief - Patents

Sir:

This communication is in response to the Notification of Non-Compliant Appeal Brief dated April 3, 2009. The Notification states that the Applicant's Appeal Brief filed 09 March 2009 is defective since it erroneously lists cancelled claim 17 as forming part of the grounds of rejection. In response, attached is a replacement for Section VII, entitled "Grounds of Rejection To Be Reviewed on Appeal", of the Appeal Brief as originally filed. Replacement Section VII no longer lists cancelled claim 17. Please replace Section VII as originally filed with the corrected version attached hereto.

In view of the foregoing, it is submitted that Applicant's Appeal Brief now complies the provisions of 37 C.F.R. § 41.37.

Respectfully submitted,
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GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issue for review on appeal is:

1. Whether claims 1-3, 6-16, 18, 19, 23, 26, and 27 are obvious under 35 U.S.C. § 103(a) over the combination of Delgado *et al.* (*Critical Reviews in Therapeutic Drug Carrier Systems*, 1992, vol. 9(3,4), 249-304, hereafter "Delgado"), Wu and Pardridge (*Proceedings of the National Academy of Sciences*, 1999, vol. 96, 254-259, hereafter "Wu"), and Sakane and Pardridge (*Pharmaceutical Research*, 1997, vol. 4(8), 1085-1091, hereafter "Sakane").¹

Reconsideration of this rejection is respectfully requested. The issue to be addressed is whether a polymer conjugate of a neuropharmaceutical peptide that is biphalin or DPDPE, where the peptide conjugate **must** cross the BBB, is rendered obvious by combined references that in no uncertain terms **teach away** from the subject claim (discussed below). Appellant respectfully submits that the Examiner has failed to meet the requirements for establishing a *prima facie* case of obviousness.

¹ In the current Final Office Action, mailed May 28, 2008, the Examiner states that the prior rejection of claims 1-3, 5-19, 21, 23, and 27 under 35 U.S.C. § 103(a) as unpatentable over Delgado and Wu has been overcome in light of Appellant's amendment to the claims. (The claims were amended to recite a conjugate that "consists of" rather than "comprises" certain features). In view of the foregoing, the Examiner must therefore be relying on Sakane to make up the deficiencies of Delgado and Wu in the current and only remaining rejection.